BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012080909
v.	ORDER DENYING MOTION FOR STAY PUT
LONG BEACH UNIFIED SCHOOL DISTRICT.	

Student filed a due process hearing request on August 30, 2012. Student alleged that Long Beach Unified School District (District) failed to provide Student seven ninety minute classes as agreed in his individualized education program (IEP). On September 11, 2012, Student filed a motion for stay put. Student contends that District unilaterally changed Student's placement and services from seven courses per day in a mild to moderate special day class (SDC) at Polytechnic High School (PHC) to three classes per day in an intensive, fast paced credit recovery program across the street at Poly Academy of Achievers and Learners (PAAL). Student seeks an order that his last implemented IEP, for the purposes of stay put, is seven classes in the mild to moderate program at Millikan High School along with transportation to and from.

District filed an opposition to Student's motion for stay put on September 17, 2012. District contends the last implemented IEP included placement in the eleventh grade mild to moderate program at PAAL.

Student's last agreed upon IEP is dated October 18, 2011, with an addendum dated March 1, 2012 (collectively IEP). Parent, counsel and a Spanish language translator attended IEP team meetings on both dates. Student's placement, including Student's move to PAAL for grades 11 and 12, was discussed at the March 1, 2012, meeting and included in the addendum signed by Parent. Parent agrees she consented to the IEP and that the IEP included Student's attendance at PAAL for eleventh grade but argues she did not understand the IEP to mean Student would be registered for three courses in the PAAL program instead of seven courses as in tenth grade at PHS.[1]

On August 28, 2012, Parent took Student to PHS to enroll in eleventh grade. Parent was directed to PAAL. Parent took Student to PAAL and met with a counselor. Parent

[1] Student has not provided any authority for the proposition that consent to an IEP is invalid, where a party was represented by counsel, the placement was discussed at the IEP team meeting, and the IEP was read to the party by a translator, because a translated copy of an IEP was not provided to Parent.

learned Student would be enrolled in three classes instead of seven classes as he had been in tenth grade at PHC. Parent felt the PAAL program was not appropriate for Student because fewer classes did not meet Student's academic needs and he would be unable to keep up with an accelerated fast paced program at PAAL due to his difficulties in reading, writing and math.

On September 5, 2012, District offered to place Student in a mild to moderate program at Millikan High School and sent Student's counsel a 27 page proposed IEP. The parties dispute the extent to which this IEP changed Student's program, however, this dispute need not be resolved because Parent has not consented to its implementation.

As discussed below, Student is not entitled to stay put under these facts.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[2]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

DISCUSSION

Here, the IEP specifically states Student will move to the mild to moderate program at PAAL for grades 11 and 12. The IEP is silent as to the number of courses or the curriculum Student would be enrolled in when he moved to the mild to moderate program at PAAL.

[2] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

Curriculum and courses are not included in the definition of "specific educational placement" in title 5, California Code of Regulations, section 3042. Thus, stay put would not apply to the specific curriculum or number of courses if this is not specified in the IEP. Further, because the PHS mild to moderate program was provided by PAAL for grades 11 and 12, Student has not demonstrated a change in placement, he has simply advanced a grade level. Student's requested placement in a seven class schedule at Millikan High School, along with transportation to and from, is not the placement or program contained in the last agreed upon IEP. In sum, Student's motion for stay put must be denied because the October 18, 2012, with the addendum dated March 1, 2012, was implemented prior to the dispute and specifically provides placement at PAAL. The parties may agree otherwise, but as of the date of the stay put motion, the parties have not agreed to change Student's placement to Millikan High School.

ORDER

Student's motion for stay put is denied.

Dated: September 19, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings